# IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 474 of 2005 alongwith CWPs No. 1382 and 1383 of 2005

Reserved on : 7th May, 2007
Date of Decision: 18th May, 2007

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1. CWP No.474 of 2005
Executive Engineer Vs. Surinder Singh & another
2. CWP No.1382 of 2005
Executive Engineer Vs. Hem Raj and another
3. CWP No.1383 of 2005
Executive Engineer Vs. Sanju and another

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Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? Yes.

1. CWP No.474 of 2005
For the petitioner: Mr. Shrawan Dogra, Advocate.
For respondent No.1: Mr. Rahul Mahajan, Advocate.
2. CWP No.1382 of 2005
For the petitioner: Mr. Shrawan Dogra, Advocate.
For respondent No.1: Mr. Vikas Rathore, Advocate.
3. CWP No.1383 of 2005
For the petitioner: Mr. Shrawan Dogra, Advocate.
For respondent No.1: Mr. Rahaul Mahajan, Advocate.

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Sanjay Karol, J.

By this common judgment, all the above writ petitions are being heard and decided together as the facts in all the writ petition are almost similar and the question of law identical.

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**Whether the reporters of Local Papers are allowed to see the Judgment?**

Facts of CWP No.474 of 2005 are being narrated.

Shri Surinder Singh employee was engaged as daily waged Beldar on 25th February, 1999 by the petitioner and worked with the petitioner upto 31st March, 2000 in certain spells on muster roll basis. On a dispute raised by workman, reference under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) was made by the Government to the H.P. Industrial Tribunal cum Labour Court, Dharamshala (for short, Tribunal) as under:-

> "Whether the termination of services of Shri Surinder Singh S/o Shri Shyam Singh daily wages Beldar by the Executive Engineer, HPSEB Division, Joginder Nagar, Distt. Mandi, H.P. w.e.f. 1.4.2000 without complying the provisions of the Industrial Disputes Act, 1947, is proper and justified? If not, what relief of service benefits, back wages, seniority and amount of compensation the aggrieved workman is entitled to?

Respondent No.1 preferred a Claim Petition before the said Tribunal, registered as Reference No. 384 of 2002 (RBT No.18/2004) Surinder Singh vs. Executive Engineer, inter alia, contending that his services were illegally terminated after 31st March, 2000 without compliance of the provisions of the Act

and also in violation of H.P.S.E.B. Industrial Establishment Standing Orders framed by virtue of Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to Standing Orders Act). Further persons junior to him have been retained and subsequent to his termination new persons have also been engaged.

In response petitioner filed reply inter alia stating that applicants left the job of their own will. There is no infraction of any provisions of the Act or Standing Orders Act. The claim being barred due to limitation/delay and laches the reference was bound to be dismissed.

The Tribunal answered the said reference by passing similar awards holding that in view of the admission made by the petitioner that no notice as required under the Standing Orders was either issued or served upon the respondents-employees, their disengagement is legally unsustainable. After relying upon the judgment of the Apex Court, on merits the claims were not held to be stale. Direction was given to the petitioner to re-engage the respondents-employees on the same terms and conditions in which they were working prior to their disengagement. Qua the relief of back wages different orders were passed. In CWP No. 474 of 2005 back wages awarded are 25%, in

CWP No.1382 of 2005 back wages are not awarded and in CWP No. 1383 of 2005 back wages awarded are 10%.

Mr.Shrawan Dogra, learned counsel for the petitioner-Board argued that (i) learned Judge could not have travelled beyond the scope of Reference as the same was restricted to violation of provisions of the Act and not the Standing Orders Act (ii) the Tribunal has no jurisdiction to expand the scope of Reference and answer the same, and (iii) the applicability of the provisions of the Standing Orders Act stood exempted with effect from 22.8.1992, therefore, any reliance thereupon is illegal.

He has relied upon M/s Village Papers Pvt. Ltd. vs. The State of Himachal Pradesh and others reported in 1993 (1) Shim. L.C. 1, to support that the Tribunal could not have been travelled beyond the scope of Reference. He has also referred to decisions Sapan Kumar Pandit vs. U.P.State Electricity Board and others reported in (2001) 6 SCC 222, Nedungadi Bank Ltd vs. K.P.Madhavankutty and others reported in 2000(2) SCC 455 to support his plea of limitation.

I have heard the learned counsel appearing for the respondents-employees. Reliance is placed on the decision of the Supreme Court in between Samishta Dube and City Etawah and another, reported in 1999 (81) FLR 746.

I proceed to decide as under:-

From the record and discussion at the Bar, the following admitted facts emerge (a) None of respondents-employees had completed 240 days prior to the date of alleged disengagement; (b) applicability of provisions of the Standing Orders Act have been exempted by virtue of Notification dated 11th September, 1985, however, published in gazette on 22nd August, 1992; (c) Since 1992 the respondents-employees are not in service of the petitioner which can be either due to disengagement or abandonment.

The Standing Orders Act has been enacted with the object of defining, with sufficient precision the conditions of employment and also to make the said conditions known to the workmen employed with the industrial establishment. The Act provides model Standing Orders. However, each of the industrial establishments can have their own Standing Orders, in conformity with the provisions of the Standing Orders Act to be duly certified by the certifying officer. Section 14 empowers the Government, by Notification to be published in the official gazette, to exempt conditionally or unconditionally, any industrial establishment from all or any of the provisions of the Standing Orders Act.

Notification exempting the petitioner-Board from the applicability of all the provisions of the Act is reproduced:-

> "EXEMPTION FROM THE PROVISIONS OF THE ACT
> (Issued and published in Hindi in RHP dated 22.8.92 p. 1180)
> Shimla 2, the 11th September, 1985.
>
> No.12-5/85-Shram.- In exercise of the powers conferred by him under section 14 of the Industrial Employment (Standing Orders) Act, 1946 (Act No. XX 1946), the Governor, Himachal Pradesh is pleased to exempt the establishment of Himachal Pradesh State Electricity Board from all the provisions of the said Act."

From the aforesaid, it is clear that petitioner H.P. State Electricity Board has been exempted from all of the provisions of the Standing Orders Act.

In this view of the matter, the Tribunal wrongly relied upon the provisions of the Standing Orders Act to hold that the disengagement is bad for want of issuance of notice giving 10 clear days to the employees. Admittedly, the employees had not completed 240 days and the Tribunal could not have come to the rescue of the employee.

With regard to the plea of delay and laches, in my view, the Tribunal has rightly come to the conclusion that there is no inordinate delay in the respondents exercising their statutory rights for pursuing their remedies. The employees had promoted raised the dispute. The matters were pending

conciliation. Some of them even approached the Administrative Tribunal. I need not refer to the judgments, which have been cited by Mr.Dogra on this point, suffice it to say that the entire case law on delay and laches has been considered by this Court in Divisional Manager, HPFC and anther vs. Garibu Ram CWP No. 1542 of 2002) decided on 17th April, 2007.

In view of my aforesaid finding, I need not decide the issue of jurisdiction of the Tribunal to enlarge and travel beyond the scope of reference. This question is left open.

During the course of hearing, it was further argued by the counsel for the respondents that in some of the matters there is admission on record that juniors have been retained in service and also employment has been given to new persons, thus violating Section 25G and 25H of the Act. According to the petitioner, it is disputed question, which cannot be gone into by this Court.

However, perusal of award shows that there is no finding on this aspect at all. Therefore, on this limited ground as to whether there is violation of provisions of Sections 25-G and 25-H of the Act, all the matters are remanded back for consideration by the Tribunal.

It would be open for the parties to place on record additional material in support of their claims

without unnecessarily delaying the matters. The Tribunal is directed to decide the matters, after affording opportunity of hearing to the parties, within a period of 12 weeks from today.

Further, it would be open for the respondents to independently take up the matters with the concerned authorities who shall, keeping in view the averments made by them in their claim petitions sympathetically consider re-engagement of the respondents-employees in accordance with law. Even though the plea of limitation/ delay and laches has been decided against the petitioner, however, while considering the issue of back wages, it would be open for the Tribunal to consider the same and decide accordingly.

No other point was raised or urged by the learned counsel for the parties.

With the above observations and directions, all the writ petitions are disposed of. All the Misc. applications are also disposed of.

Records of the cases, if any, be sent back immediately and forthwith.

18th May, 2007 (Sanjay Karol),
(C) Judge